

AMENDED IN ASSEMBLY MAY 6, 2010

AMENDED IN ASSEMBLY APRIL 20, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2347

Introduced by Assembly Member Feuer

February 19, 2010

An act to amend Section 2924f of the Civil Code, relating to mortgage defaults.

LEGISLATIVE COUNSEL'S DIGEST

AB 2347, as amended, Feuer. Mortgage defaults: secondary public financing.

Existing law requires a lender to file a notice of default in the case of nonjudicial foreclosure prior to enforcing a power of sale as a result of a default on an obligation secured by real property, as specified. Existing law also requires that a notice of sale be given before the power of sale may be exercised.

This bill would create an exception to the provision governing the exercise of the power of sale by providing that if a property contains ~~2~~ 5 or more ~~dwelling~~ multifamily units and a public entity, *as defined*, holds a deed of trust, or is a party to a recorded rent regulatory agreement on the property, the public entity may, by written notice to the trustee, postpone the sale date by no more than 60 days. *The bill would provide that, if multiple public entities hold deeds of trust or are parties to a recorded rent regulatory agreement on the property, only one entity may postpone the sale date. The bill would also provide that*

the power to postpone a sale date pursuant to these provisions may be exercised only once.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924f of the Civil Code is amended to
2 read:
3 2924f. (a) As used in this section and Sections 2924g and
4 2924h, “property” means real property or a leasehold estate therein,
5 and “calendar week” means Monday through Saturday, inclusive.
6 (b) (1) Except as provided in subdivision (c), before any sale
7 of property can be made under the power of sale contained in any
8 deed of trust or mortgage, or any resale resulting from a rescission
9 for a failure of consideration pursuant to subdivision (c) of Section
10 2924h, notice of the sale thereof shall be given by posting a written
11 notice of the time of sale and of the street address and the specific
12 place at the street address where the sale will be held, and
13 describing the property to be sold, at least 20 days before the date
14 of sale in one public place in the city where the property is to be
15 sold, if the property is to be sold in a city, or, if not, then in one
16 public place in the judicial district in which the property is to be
17 sold, and publishing a copy once a week for three consecutive
18 calendar weeks, the first publication to be at least 20 days before
19 the date of sale, in a newspaper of general circulation published
20 in the city in which the property or some part thereof is situated,
21 if any part thereof is situated in a city, if not, then in a newspaper
22 of general circulation published in the judicial district in which
23 the property or some part thereof is situated, or in case no
24 newspaper of general circulation is published in the city or judicial
25 district, as the case may be, in a newspaper of general circulation
26 published in the county in which the property or some part thereof
27 is situated, or in case no newspaper of general circulation is
28 published in the city or judicial district or county, as the case may
29 be, in a newspaper of general circulation published in the county
30 in this state that (A) is contiguous to the county in which the
31 property or some part thereof is situated and (B) has, by comparison
32 with all similarly contiguous counties, the highest population based
33 upon total county population as determined by the most recent

1 federal decennial census published by the Bureau of the Census.
2 A copy of the notice of sale shall also be posted in a conspicuous
3 place on the property to be sold at least 20 days before the date of
4 sale, where possible and where not restricted for any reason. If the
5 property is a single-family residence the posting shall be on a door
6 of the residence, but, if not possible or restricted, then the notice
7 shall be posted in a conspicuous place on the property; however,
8 if access is denied because a common entrance to the property is
9 restricted by a guard gate or similar impediment, the property may
10 be posted at that guard gate or similar impediment to any
11 development community. Additionally, the notice of sale shall
12 conform to the minimum requirements of Section 6043 of the
13 Government Code and be recorded with the county recorder of the
14 county in which the property or some part thereof is situated at
15 least 20 days prior to the date of sale. The notice of sale shall
16 contain the name, street address in this state, which may reflect an
17 agent of the trustee, and either a toll-free telephone number or
18 telephone number in this state of the trustee, and the name of the
19 original trustor, and also shall contain the statement required by
20 paragraph (3) of subdivision (c). In addition to any other
21 description of the property, the notice shall describe the property
22 by giving its street address, if any, or other common designation,
23 if any, and a county assessor's parcel number; but if the property
24 has no street address or other common designation, the notice shall
25 contain a legal description of the property, the name and address
26 of the beneficiary at whose request the sale is to be conducted, and
27 a statement that directions may be obtained pursuant to a written
28 request submitted to the beneficiary within 10 days from the first
29 publication of the notice. Directions shall be deemed reasonably
30 sufficient to locate the property if information as to the location
31 of the property is given by reference to the direction and
32 approximate distance from the nearest crossroads, frontage road,
33 or access road. If a legal description or a county assessor's parcel
34 number and either a street address or another common designation
35 of the property is given, the validity of the notice and the validity
36 of the sale shall not be affected by the fact that the street address,
37 other common designation, name and address of the beneficiary,
38 or the directions obtained therefrom are erroneous or that the street
39 address, other common designation, name and address of the
40 beneficiary, or directions obtained therefrom are omitted. The term

1 “newspaper of general circulation,” as used in this section, has the
2 same meaning as defined in Article 1 (commencing with Section
3 6000) of Chapter 1 of Division 7 of Title 1 of the Government
4 Code.

5 The notice of sale shall contain a statement of the total amount
6 of the unpaid balance of the obligation secured by the property to
7 be sold and reasonably estimated costs, expenses, advances at the
8 time of the initial publication of the notice of sale, and, if
9 republished pursuant to a cancellation of a cash equivalent pursuant
10 to subdivision (d) of Section 2924h, a reference of that fact;
11 provided, that the trustee shall incur no liability for any good faith
12 error in stating the proper amount, including any amount provided
13 in good faith by or on behalf of the beneficiary. An inaccurate
14 statement of this amount shall not affect the validity of any sale
15 to a bona fide purchaser for value, nor shall the failure to post the
16 notice of sale on a door as provided by this subdivision affect the
17 validity of any sale to a bona fide purchaser for value.

18 (2) If the sale of the property is to be a unified sale as provided
19 in subparagraph (B) of paragraph (1) of subdivision (a) of Section
20 9604 of the Commercial Code, the notice of sale shall also contain
21 a description of the personal property or fixtures to be sold. In the
22 case where it is contemplated that all of the personal property or
23 fixtures are to be sold, the description in the notice of the personal
24 property or fixtures shall be sufficient if it is the same as the
25 description of the personal property or fixtures contained in the
26 agreement creating the security interest in or encumbrance on the
27 personal property or fixtures or the filed financing statement
28 relating to the personal property or fixtures. In all other cases, the
29 description in the notice shall be sufficient if it would be a
30 sufficient description of the personal property or fixtures under
31 Section 9108 of the Commercial Code. Inclusion of a reference to
32 or a description of personal property or fixtures in a notice of sale
33 hereunder shall not constitute an election by the secured party to
34 conduct a unified sale pursuant to subparagraph (B) of paragraph
35 (1) of subdivision (a) of Section 9604 of the Commercial Code,
36 shall not obligate the secured party to conduct a unified sale
37 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
38 of Section 9604 of the Commercial Code, and in no way shall
39 render defective or noncomplying either that notice or a sale
40 pursuant to that notice by reason of the fact that the sale includes

1 none or less than all of the personal property or fixtures referred
2 to or described in the notice. This paragraph shall not otherwise
3 affect the obligations or duties of a secured party under the
4 Commercial Code.

5 (c) (1) This subdivision applies only to deeds of trust or
6 mortgages which contain a power of sale and which are secured
7 by real property containing a single-family, owner-occupied
8 residence, where the obligation secured by the deed of trust or
9 mortgage is contained in a contract for goods or services subject
10 to the provisions of the Unruh Act (Chapter 1 (commencing with
11 Section 1801) of Title 2 of Part 4 of Division 3).

12 (2) Except as otherwise expressly set forth in this subdivision,
13 all other provisions of law relating to the exercise of a power of
14 sale shall govern the exercise of a power of sale contained in a
15 deed of trust or mortgage described in paragraph (1).

16 (3) If any default of the obligation secured by a deed of trust or
17 mortgage described in paragraph (1) has not been cured within 30
18 days after the recordation of the notice of default, the trustee or
19 mortgagee shall mail to the trustor or mortgagor, at his or her last
20 known address, a copy of the following statement:

21
22 YOU ARE IN DEFAULT UNDER A

23 _____,
24 (Deed of trust or mortgage)

25 DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
26 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
27 YOU NEED AN EXPLANATION OF THE NATURE OF THE
28 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
29 LAWYER.
30

31 (4) All sales of real property pursuant to a power of sale
32 contained in any deed of trust or mortgage described in paragraph
33 (1) shall be held in the county where the residence is located and
34 shall be made to the person making the highest offer. The trustee
35 may receive offers during the 10-day period immediately prior to
36 the date of sale and if any offer is accepted in writing by both the
37 trustor or mortgagor and the beneficiary or mortgagee prior to the
38 time set for sale, the sale shall be postponed to a date certain and
39 prior to which the property may be conveyed by the trustor to the
40 person making the offer according to its terms. The offer is

1 revocable until accepted. The performance of the offer, following
2 acceptance, according to its terms, by a conveyance of the property
3 to the offeror, shall operate to terminate any further proceeding
4 under the notice of sale and it shall be deemed revoked.

5 (5) In addition to the trustee fee pursuant to Section 2924c, the
6 trustee or mortgagee pursuant to a deed of trust or mortgage subject
7 to this subdivision shall be entitled to charge an additional fee of
8 fifty dollars (\$50).

9 (6) This subdivision applies only to property on which notices
10 of default were filed on or after the effective date of this
11 subdivision.

12 (d) If a property contains ~~two or more dwelling~~ *five or more*
13 *multifamily* units and a public entity holds a deed of trust or is a
14 party to a recorded rent regulatory agreement on the property, the
15 public entity may, by written notice to the trustee, postpone the
16 sale date by no more than 60 days.

17 *(1) If multiple public entities hold deeds of trust or are parties*
18 *to a recorded rent regulatory agreement on the property pursuant*
19 *to this subdivision, only one entity may postpone the sale date.*

20 *(2) The power to postpone the sale pursuant to this subdivision*
21 *may be exercised only once.*

22 *(e) For purposes of this section, "public entity" includes a city,*
23 *county, city and county, redevelopment agency, or any political*
24 *subdivision thereof.*